

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTONSTACIA GILLASPY, an
individual,

NO. CV-06-0114-EFS

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY DISMISSAL
OF PLAINTIFF'S CLAIMS WITHOUT
PREJUDICE**WEYERHAEUSER COMPANY, a
Washington Corporation,

Defendant.

Before the Court, without oral argument, is Plaintiff Stacia Gillaspys Motion for Voluntary Dismissal of Plaintiffs Claims Without Prejudice ("Motion to Dismiss") (Ct. Rec. 7). After reviewing the submitted materials and relevant authority, the Court is fully informed and hereby grants Plaintiffs motion.

I. Background

On April 20, 2006, Plaintiff initiated this action by filing her Complaint for Damages ("Complaint"). (Ct. Rec. 1.) In response to Plaintiffs Complaint, on May 24, 2006, Defendant Weyerhaeuser Company filed its Answer and Counterclaim, in which a counterclaim for reasonable attorney fees was asserted. (Ct. Rec. 3.) One week later, on May 30, 2006, Plaintiff filed her Motion to Dismiss, in which she moved the Court under Federal Rule of Civil Procedure 41(a)(2) for an order dismissing

1 her claims without prejudice and with no award of costs to Defendant.
2 (Ct. Rec. 7.) Pursuant to Local Rule 7.1(c), Defendant had eleven days
3 to respond to Plaintiff's Motion to Dismiss. To date, fifteen days since
4 Plaintiff filed her Motion to Dismiss, Defendant has failed to file a
5 response.

6 **II. Analysis**

7 Rule 41(a)(2) states:

8 Except as provided in paragraph (1) of this subdivision of this
9 rule, an action shall not be dismissed at the plaintiff's
10 instance save upon order of the court and upon such terms and
11 conditions as the court deems proper. If a counterclaim has
12 been pleaded by a defendant prior to the service upon the
13 defendant of the plaintiff's motion to dismiss, the action
14 shall not be dismissed against the defendant's objection unless
15 the counterclaim can remain pending for independent
16 adjudication by the court. Unless otherwise specified in the
17 order, a dismissal under this paragraph is without prejudice.

18 Moreover, under Local Rule 7.1(h)(5), a "failure to timely file a
19 memorandum . . . in opposition to any motion may be considered by the
20 Court as consent on the part of the party failing to file such memorandum
21 to the entry of an Order adverse to the party in default."

22 In this instance, the Court construes Defendant's failure to file
23 a timely response to Plaintiff's Motion to Dismiss as consent to a ruling
24 in favor of the Motion to Dismiss. LR 7.1(h)(5). Furthermore, because
25 the Court finds no reason why Plaintiff's claims against Defendant should
26 not be dismissed and Defendant has raised no counterclaim-related
objection to a complete dismissal of this action, the Court grants
Plaintiff's Motion to Dismiss by dismissing this action without prejudice
or the award of costs to either party.

Accordingly, **IT IS HEREBY ORDERED:**

1 1. Plaintiff's Motion for Voluntary Dismissal of Plaintiff's Claims
2 Without Prejudice (**Ct. Rec. 7**) is **GRANTED**.

3 2. All pending motions are **DENIED AS MOOT**.

4 3. Enter judgment without prejudice.

5 4. **CLOSE THIS FILE**.

6 **IT IS SO ORDERED**. The District Court Executive is directed to enter
7 this Order and provide a copy to counsel.

8 **DATED** this 16th day of June 2006.

9
10 S/ Edward F. Shea

EDWARD F. SHEA

11 United States District Judge

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